

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (22-041)**

Subject

Initiative petition from Mitchell Hubbard regarding a proposed constitutional amendment to Article III of the Constitution of Missouri. (Received July 6, 2021)

Date

July 26, 2021

Description

This proposal would amend Article III of the Constitution of Missouri.

The amendment is to be voted on in November 2022.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Health and Senior Services**, the **Department of Commerce and Insurance**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **Malta Bend R-V School District**, **Mehlville School District**, **Wellsville-Middletown R-1 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, **St. Louis Community College**, the **Missouri Lottery**, the **State Tax Commission**, the **Missouri Veterans Commission**, the **Missouri Ethics Commission**, the **Missouri Office of Prosecution Services**, the **Kansas City Board of Police Commissioners**, the **Metropolitan Police Department - City of St. Louis**, the **St. Louis County Board of Elections**, the **Board of Election Commissioners City of St. Louis**, the **Kansas City**

Board of Election Commissioners, the Platte County Board of Elections, the Jackson County Election Board, the Clay County Board of Election Commissioners, the Lieutenant Governor's office, the Children's Trust Fund of Missouri, the Missouri Joint Municipal Electric Utility Commission, the State Auditor's office, the Metropolitan Zoological Park and Museum District, the Missouri Municipal League, the Missouri Bar Association, the Missouri Gaming Commission, the Municipal League of Metro St. Louis, University of Central Missouri, Harris-Stowe State University, Lincoln University, Missouri State University, Missouri Southern State University, Missouri Western State University, Northwest Missouri State University, Southeast Missouri State University, and Truman State University.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, they expect that their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, their office may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated the fiscal impact on their department is unclear. This petition prohibits a state agency from doing business with a private entity that may require its employees to receive a Covid-19 vaccination. Their department provides services to private entities on a contractual basis and the cost to not renew those contracts would have a fiscal impact but it is unclear to what extent.

Officials from the **Department of Economic Development** indicated no impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated no impact to their department.

Officials from the **Department of Higher Education and Workforce Development** indicated no fiscal impact.

Officials from the **Department of Health and Senior Services** indicated this initiative petition has no impact.

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates numerous concerns for their department that could negatively impact the Department of Mental Health consumers and staff.

Their department's responsibility is to their consumers and staff who may be at high risk of an exposure to a contagious virus. Protection measures from a virus for staff and

consumers helps ensure safety for all members. Preventing preventative measures such as wearing masks, quarantining exposed individuals, or mandating vaccines could potentially spread the virus to vulnerable/susceptible individuals, causing damaging and debilitating outcomes, even death. In addition, their department would be limited on the ability to protect consumers through the visitation limitations.

This petition creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated the fiscal impact to this proposal is unknown at this time.

This petition may have fiscal and operational impacts to their department. This petition prohibits interference with the right of individuals and houses of worship to determine the manner, place, and time of worship; the number of attendees; or tracking or creating a database of members of any religion. While it is believed their department is still allowed to restrict services under 1.302 RSMo, it does present another avenue for offenders to challenge when services are restricted. This may result in additional lawsuits by offenders. In addition, they track an offender's religious preference, which is not allowed under this petition. It is important for their department to track this information in order to ensure they are providing religious accommodations appropriately and effectively. The petition also prohibits the unequal or different treatment of any person based on whether or not they have received the vaccine. This could impact how their department handles offender visitations and work release programs.

Their department contracts with a health care provider to provide the constitutionally required health care service for the offender population. Many health care providers are beginning to require their staff be vaccinated. If their contracted provider makes this a requirement for their employees, according to this proposed section, they would no longer be permitted to use them. This could have a major impact on their department both fiscally and operationally.

RSMo 217.365 prohibits offenders from possessing cash while incarcerated. Their department operates canteens within each prison. The offenders are allowed to purchase items from the canteens using funds on the trust account. Allowing the offenders to spend cash in the canteens would jeopardize the safety and security of their institutions. Being in compliance with this section would have a major impact on their department fiscally and operationally.

Currently, friends and family are only permitted to fund an offenders commissary account by money order or credit card through a third party provider. In order to comply with this section, they would have to contract with a lockbox provider to offer cash service at 20 facilities across the state. This could be a significant cost to their department.

Additionally, their department collects a monthly fee from offenders under the supervision of probation and parole. The offenders are allowed to pay these fees utilizing ACH, credit cards or money orders. In order to comply with this section they would have to provide lockbox services at each of their 49 probation and parole district offices. This service would have a significant fiscal impact on their department.

This proposal has many instances where it could significantly impact their department, both fiscally and operationally; however, the fiscal impact is unknown at this time.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article III.

Officials from the **Department of Revenue** indicated no impact.

Officials from the **Department of Public Safety - Office of the Director** indicated the language in this petition has the potential to fiscally impact their department; however, they are not able to determine the amount of any fiscal impact at this time. The Missouri Veterans Commission has addressed their fiscal concerns in a separate response to the State Auditor's Office.

This legislation would have a significant legal impact on their department. Here are a few areas of concern:

I.A.1 would require that "if one non-government entity remains open then every non-government entity shall remain open." By its plain language, this would eliminate the ability of government to close businesses and organizations in an emergency, and may prohibit them from closing them in circumstances other than an emergency. This concern is exacerbated by I.D, which states that this section is applicable at all times, and not just during an emergency.

I.A.3.a would prohibit the use of data from technology, including cellular phones and license plate readers, "to track the movement of any citizen for the purpose of contact tracing." Because "contact tracing" is not defined, there is a colorable argument that these tools would no longer be available in law enforcement investigations that are unrelated to public health emergencies.

I.A.3.e would prohibit "Unequal or different treatment of any person based on whether or not they have received a vaccine." This may have an effect on the Missouri National Guard, as members of the military are required to be vaccinated against a variety of diseases (e.g. smallpox and anthrax) in order to be eligible to serve.

I.A.3.f would prohibit awarding contracts, doing business with, or investing funds with any non-government entity that treats employees or volunteers differently based on whether they received a COVID-19 vaccination. This would restrict the ability of the state to contract with entities that have adopted vaccination policies that are responsive to the needs of their workplaces, for example, medical providers requiring a COVID-19 vaccination.

I.A.4.a would prohibit "restrictions, limitations, and interference with the right of healthy people" to travel to a location unless the area is unsafe "due to damaged infrastructure, natural disaster or acts of war." This would eliminate the ability to impose curfews or impose travel restrictions when civil unrest is occurring.

I.A.4.c would prohibit "restrictions, limitations, and interference with the right of healthy people to peacefully assemble." This would eliminate the ability to enact and enforce otherwise content-neutral time, place, and manner restrictions.

In addition, concerning Section A.7, the Missouri State Highway Patrol is not aware of any "bioterrorism" state charge in Missouri. This is relevant, because if a COVID-infected person intentionally coughed on another person in Missouri, they would likely be charged with Assault 4th Degree, but this section appears to nullify the charge of assault in these circumstances. The Patrol recommends including the word "assault" along with "bioterrorism."

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact from this petition.

Officials from the **Governor's office** indicated this proposal enacting restrictions on the ability to respond to states of emergency should not fiscally impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated there is an unknown fiscal impact (cost or savings) to their department associated with paragraph A.3.f. in this initiative petition.

Officials from the **Department of Transportation** indicated this initiative petition would have no fiscal impact to their department/Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal enacting restrictions on the ability to respond to states of emergency should not fiscally impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be \$7 million based on the cost of the 2020 Presidential Preference Primary.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

In FY19, over \$5.8 million was spent to publish the full text of the measures for the August and November elections. Their office estimates \$75,000 per page for the costs of publications based on the actual cost incurred for the one referendum that was on the August 2018 ballot.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated no fiscal impact from this initiative petition for their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from **Clay County** indicated they estimate no cost or savings from this petition.

Officials from **Greene County** indicated there are no estimated costs or savings to report from their county for this initiative petition.

Officials from **St. Louis County** indicated their office does not have any information to provide.

Officials from the **City of Kansas City** indicated their local government estimates the fiscal impact of this amendment for fiscal years 2021 to be as follows:

This bill inhibits and limits their city's powers and flexibility to exercise its necessary powers, such as its police powers. It also affect their city's powers as necessary to respond

to emergencies, including public health emergencies, for example, among other things, limits on:

- Shutting down business or type of business
- Regulating places of worship
- Performing necessary public health measures such as contact tracing and other epidemiological responses
- Encouraging vaccine usage
- Enforcing ordinance compliance
- Business affairs of the city
- Police powers of the city

This bill could also encourage and/or create liability for health care providers and workers, this would probably have an effect on related insurance.

Implementation of the bill would have a negative fiscal impact on their city. The extent of such impact would vary based on the specifics of situation or emergency, but costs based on public health emergencies could be vast.

Officials from the **City of St. Joseph** indicated no fiscal impact.

Officials from **Metropolitan Community College** indicated no fiscal impact to their college.

Officials from the **Missouri Lottery** indicated no fiscal impact to their office.

Officials from the **State Tax Commission** indicated this initiative has no fiscal impact on their office.

Officials from the **Missouri Veterans Commission** indicated:



MISSOURI VETERANS COMMISSION

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July 7, 2021

The Honorable John R. Ashcroft
Secretary of State
600 W. Main Street
Jefferson City, MO 65101

Dear Secretary of State Ashcroft,

Initiative Petition 2022-041 will potentially have a significant fiscal impact upon the Missouri Veterans Commission (MVC). Compliance with the proposed Article III, section 39(g) of the Missouri Constitution would put MVC in violation of Department of Veterans Affairs (VA) regulations regarding infection control and therefore could jeopardize our federal funding. Additionally, compliance with this provision would jeopardize the licenses of our medical staff (CNAs, nurses, physicians, etc.) if they were not allowed to adhere to standards of medical care for residents of our veterans homes who are demonstrating signs and symptoms of a contagious disease. Finally, although the proposed section contains a liability protection clause, the restraint on the use of standard care procedures for caring for people suspected of having a contagious disease would put us in violation of the collective bargaining agreement that we have in place with our direct care staff. This collective bargaining agreement requires us to adhere to all CDC published guidance and thus we would anticipate litigation with the Union representing our employees if we were unable to do so. Therefore, compliance with this proposal can reasonably be expected to lead to litigation despite its liability protections and MVC defers to the AGO as to any costs to the state in litigation expenses. MVC anticipates a possible fiscal impact of more than \$70 million annually if VA funding for its Homes Program is revoked due to failure to comply with infection control protocols.

If I can be of any further assistance on this issue, please contact me at (573) 522-4224 at your convenience.

Sincerely,

A handwritten signature in blue ink that reads "Scotty L. Allen".

Scotty L. Allen
General Counsel
Missouri Veterans Commission

Officials from the **St. Louis County Board of Elections** indicated this will have no impact on their Board of Elections.

Officials from the **Kansas City Board of Election Commissioners** indicated the cost to conduct an election in the Kansas City portion of Jackson County is \$625,000. This cost is prorated depending on the number of entities that participate and their pro-rata share of the cost based on voter registration.

Officials from the **State Auditor's office** indicated no fiscal impact on their office.

Officials from the **Children's Trust Fund of Missouri** indicated no impact on their office.

Officials from the **Missouri Gaming Commission** indicated the proposal will have no fiscal impact on their office.

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, University of Missouri, St. Louis Community College, the Missouri Ethics Commission, the Missouri Office of Prosecution Services, the Kansas City Board of Police Commissioners, the Metropolitan Police Department - City of St. Louis, the Board of Election Commissioners City of St. Louis, the Platte County Board of Elections, the Jackson County Election Board, the Clay County Board of Election Commissioners, the Lieutenant Governor's office, the Missouri Joint Municipal Electric Utility Commission, the Metropolitan Zoological Park and Museum District, the Missouri Municipal League, the Missouri Bar Association, the Municipal League of Metro St. Louis, University of Central Missouri, Harris-Stowe State University, Lincoln University, Missouri State University, Missouri Southern State University, Missouri Western State University, Northwest Missouri State University, Southeast Missouri State University, and Truman State University.**

Fiscal Note Summary

State governmental entities expect an unknown fiscal impact with a potential lost funding of at least \$70 million annually. Local governmental entities expect an unknown negative fiscal impact that could be significant.